

1 The Claiming of Community

1.1 Becoming an American

Born a Canadian, in 2012 I became a citizen of the United States. As a political theorist, I found the naturalization process a strange experience. Becoming a US citizen was not the culmination of a lifelong ambition. I had stumbled into being a US resident when a late and surprisingly generous offer of admission from the University of Minnesota for a PhD program diverted me from my plans to do a PhD in England. I had arrived in the United States in August 2000, when the United States was at the height of its economic and military power, and witnessed its rapid decline over the next twelve years. The twin crises of the post-9/11 global “War on Terror” and the 2008 global financial crisis seemed to be the harbinger of the unraveling of American power.

By 2012 I had experienced America’s extremes: I lived five plus years in Minneapolis, Minnesota (one of America’s most liberal cities – and one of its coldest) and five years in Norman, Oklahoma (one of its most conservative (and hottest) states). I knew full well what I was signing up for; despite an odd ambivalence, I decided to become an American: I was claiming my community.

Part of this ambivalence was rooted in my training as a political theorist. I teach Hobbes’s, Locke’s, and Rousseau’s accounts of the social contract every year. These texts paint consent, citizenship, and obedience as a choice between either fully embracing one’s polity or committing oneself to radically change it. My reasons for becoming an American were far more quotidian. I had held a permanent resident card (known as a “green card”) since 2007, and the US Customs and Immigration Service notified me in 2011 that I would soon be eligible for citizenship. With my tenure at the University of Oklahoma looming, I felt that if I was going to live in the United States long term I should perhaps become a citizen. A green card is revocable, but my employment, mortgage, and retirement were all deeply tied to my continuing to be a legal US resident. Traveling across borders was a minor hassle.

Citizenship would afford me the right to vote in elections, although the effective impact of my left-wing vote in a decidedly right-wing state was so minimal as to be a purely symbolic act of dissent. Ultimately I became a citizen out of convenience.

This decision cut against much of the political theory on citizenship. Citizenship is often painted as an affective bond through which individuals take responsibility for their community. Growing up in Canada, yet spending too much of my youth watching American TV stations, the claims of American exceptionalism rang hollow. Canada seemed to have ended up in roughly the same place as the United States even though its colonies had not rebelled against the British crown in 1776. In my personal experience, becoming a US citizen felt like simply another task of household management; it was slightly more complicated than applying for a mortgage or filing my taxes. Yet the political theory that I taught for a living portrayed it as a monumental moment in which by giving my express consent to the US Constitution, I was legitimizing the government and accepting responsibility for the actions it carried out in my name. The citizenship naturalization ceremony symbolizes citizens consenting to be ruled by their government. Yet I found that the myth of the social contract was disconnected from my personal experience of consenting to an actual social contract.

Most of us become citizens by accident. We are citizens of the country we (or perhaps our parents) happen to be born in. While citizenship affords us rights (if we are lucky enough to be born in a time and place where the government upholds such rights, and if our state deems us personally worthy of them), it also creates numerous obligations. The conceptual shorthand for this relationship between citizen and government, subject and state, is the social contract. It stipulates what the government owes me and what I owe the government in return. It also raises the question of when (if ever) I might break that contract, and what I (or we – because I alone will not fare too well in a fight against my state) can or must do if the government fails to uphold its end of the bargain. Yet when we describe this relationship between the self and the state as a social contract, we quickly encounter a puzzle: How can I be party to an agreement that I do not remember making?

Often when teaching social contract theory to an undergraduate class, a student will raise precisely this question. Did society really emerge as Locke, or Hobbes, or Rousseau says that it did? To which, often because time is short, I will reply that this is just a thought experiment. The political theorist imagines a social contract to help clarify fundamental issues about our relationship to society. Yet when I became a naturalized US citizen, it is clear when and how I consented to this society. I took the

Oath of Allegiance¹ in a US Federal Court on March 12, 2012, in which I swore to renounce allegiance to “any foreign prince, potentate, state or sovereignty, of whom or which I have heretofore been a subject or citizen.”² The oath also promises to support the constitution, and to defend the laws and constitution of the United States against all enemies foreign and domestic, and to bear arms on behalf of the United States.³ When you take the oath, officers of the court watch to make sure all the participants in the ceremony actually say the words. In the language of J. L. Austin, the Oath of Allegiance is a performative utterance.⁴ By saying those words, in that context, I gave my express consent to the social contract of the United States of America.

Most of us do not give express consent to our country; instead, we find ourselves thrown into a particular citizenship at a particular time and place. This “thrownness” raises many questions.⁵ For example, if I did not expressly consent to my country and its constitution and laws, am I obligated to obey its commands? What do I do if I don’t like what my country is or is becoming? What obligations do I have toward

¹ The Oath of Allegiance is different from the Pledge of Allegiance that American school children say at the start of each school day. It is a legal requirement to take this oath before a federal judge or authorized officer of the US Citizenship and Immigration Services. For the text and the legal requirements it places on the oath taker, see “Naturalization Oath of Allegiance to the United States of America | USCIS,” July 5, 2020, www.uscis.gov/citizenship/learn-about-citizenship/the-naturalization-interview-and-test/naturalization-oath-of-allegiance-to-the-united-states-of-america.

² “Naturalization Oath of Allegiance to the United States of America | USCIS.” Immediately prior to taking the oath, they inform you that you can remain a citizen of another country; you just can’t call upon their embassy if you are arrested in the United States, and if you enter a third country on your other passport then the US government will not assist you if you get into trouble there.

³ Although I have never owned a gun, unlike most “natural-born” citizens I don’t just have a right to bear arms; I have also sworn an oath that obliges me to bear arms when so asked by the government.

⁴ J. L. Austin, *How to Do Things with Words: Second Edition*, ed. J. O. Urmson and Marina Sbisa, 2nd ed. (Cambridge, MA: Harvard University Press, 1975), 6. N.B. Austin identifies “contractual” performatives as a subset of performative utterances wherein I form a contract by uttering the necessary words (such as “I promise to do X” or “I bet you X that Y will happen”).

⁵ I draw the concept of thrownness from Heidegger’s idea of *Geworfen*, which captures the sense that our identities as citizens are determined by having been born into a particular citizenship, due to a particular set of family relations, under a particular legal regime, at a particular moment in history, and that none of the determining conditions of my citizenship were within my control. See Martin Heidegger, *Being and Time: A Translation of Sein Und Zeit*, trans. Joan Stambaugh, SUNY Series in Contemporary Continental Philosophy (Albany: State University of New York Press, 1996), 135–37. For a helpful interpretation of the concept of thrownness, see Simon Critchley, “Being and Time, Part 4: Thrown into This World,” *The Guardian*, June 29, 2009, www.theguardian.com/commentisfree/belief/2009/jun/29/religion-philosophy.

my fellow citizens? And how can we change our society's constitution if we find it wanting?

1.2 Cavell's Reinterpretation of the Social Contract

Stanley Cavell observes that the social contract tradition struggles to make sense of our ordinary relationship to our society as citizens. The social contract tradition from Hobbes to Rousseau frames my consent to my society as a choice between obedience to that society or rebellion against it. Cavell's quarrel with the social contract tradition is that it largely ignores what is involved in consenting for everyday citizenship. He explains that between "strict compliance" and "civil disobedience, there is the ground upon which existent constitutional democracies circumscribe everyday life" (CHU, 108). My choice, in taking the Oath of Allegiance, was not between returning to the state of nature or swearing absolute obedience to the United States of America. It was not even between continuing to live in the United States and moving somewhere else; it was between remaining a legal resident or becoming a citizen. Around a hundred other people made the same choice that day in the courtroom, and I imagine that each had slightly different, and deeply personal, reasons for deciding to do so. Cavell's reinterpretation of the social contract offers a space in which to think through these ambivalences and to understand the social contract as an everyday agreement, rather than the exceptional agreement that most canonical political theory takes it to be.

Cavell's analysis of the social contract occurs over six pages near the beginning of *The Claim of Reason* (CR, 22–28). Yet the passage's brevity belies its significance. Since it is the first place where he offers an extended interpretation of a key political concept, it is worth reading closely. The passage foreshadows his later turn to democratic perfectionism. It also characterizes the political and the epistemological as linked by a community's search for agreement in their criteria. While Cavell does not phrase this in explicitly post-truth politics terms, his reading of the social contract underscores why the recent turn against facts is so politically fraught. Because the social contract links epistemology and politics, when we can no longer agree on what is true, we do not just lose shared understandings of truth; we also lose our shared sense of community.

The social contract is central to understanding both Cavell's response to skepticism and his unique political philosophy. Because it is his first extended treatment of a political theme, this passage has attracted considerable commentary from other political philosophers. Mulhall has noted how this passage develops a parallel argument about our search

for shared meanings (in our language) and shared values (in our political life).⁶ For Hammer, the passage represents a powerful critique of the liberal assumption that the self is “fully constituted *outside* the political (or public realm).”⁷ Hammer argues instead that Cavell is like a classical republican, seeing the self as capable of shaping its political identity only by participating in the social contract. For Hammer, Cavell’s thinking descends directly from Aristotle and Cicero.⁸ Norris, however, argues that the emphasis on Cavell’s Aristotelian influence is overstated and places Cavell within the tradition of Rousseau. From this perspective, Cavell’s social contract “casts considerable light on our ability as citizens to speak for one another in the first person plural.”⁹ According to this account, Cavell reinterprets the social contract as expressing the Kantian and Rousseauian idea of freedom as autonomy.¹⁰ Owen, instead, finds in Cavell’s reading of the social contract a new interpretation of consent “as the condition of having and exercising one’s political voice.”¹¹ While all of these interpretations have highlighted the originality of Cavell’s reading of the social contract, his critique of earlier accounts of the social contract as forms of political epistemology has been largely overlooked.

According to Cavell, Locke’s account of the social contract and Hume’s critique of it both grapple with the question: “How can I have consented to the formation of the government, since I am not aware that I ever asked for it or gave it” (CR, 24)? The social contract tradition rests on an “epistemological mystery” (CR, 24). If my obligation to obey the government hinges on a contract to which I am a party, then how can I know what my rights and obligations are under that contract? But by framing this puzzle in epistemological terms, social contract theorists set up a binary choice: Either (1) I am obligated to obey the government, so long as its advantages outweigh the disadvantages of returning to the state of nature (Hobbes and Locke) or (2) my obedience to the government is a matter of convention (Hume).

Cavell’s reinterpretation of the social contract argues that it is not about political knowledge but rather which modes of responsiveness I enact to claim my political community as my own. The danger of the

⁶ Stephen Mulhall, *Stanley Cavell: Philosophy’s Recounting of the Ordinary* (Oxford: Oxford University Press, 1994), 55–69.

⁷ Espen Hammer, *Stanley Cavell: Skepticism, Subjectivity, and the Ordinary*, 1st ed. (Cambridge/Malden, MA: Polity, 2002), 130.

⁸ Hammer, 130.

⁹ Andrew Norris, “Political Revisions: Stanley Cavell and Political Philosophy,” *Political Theory* 30, no. 6 (December 1, 2002): 828, <https://doi.org/10.1177/0090591702238205>.

¹⁰ Norris, *Becoming Who We Are*, 106–12.

¹¹ Owen, “Cultural Diversity and the Conversation of Justice,” 587.

epistemological approach to the social contract is that it frames my relationship to my state as merely one of choosing the advantages of civil society over the state of nature. This approach leaves the citizen with two choices – either obey the state or rebel. Yet our everyday relations with the state fall somewhere in between. Cavell's reading of the social contract cultivates an ethos in which, rather than requiring the citizen to ask how they can *know* that they consented to society, it asks them how they can *claim* their community and fellow citizens as their own.

This chapter examines what difference it makes to think of the social contract as an ongoing activity of *claiming my community* rather than an answer to a political epistemological question about *my obligations to the state*. While Cavell offers this reading before he develops his account of democratic perfectionism, this rethinking of the social contract shares the ethos of seeing the self and its society as in a constant struggle to attain its next state. Cavell thus sees the social contract as an ongoing practice of reciprocal elucidation in which an individual critiques the shortcomings of her society so that she can continue to feel that she belongs in it.

To unpack this idea, the next section explores how (and why) Cavell examines the social contract in the middle of an exposition of Wittgenstein's concepts of criteria. Having established how the social contract fits into Cavell's larger project, Section 1.4 examines what he means by calling the social contract an epistemological mystery. Section 1.5 considers how Cavell reinterprets consent. Section 1.6 identifies four additional modes of response that citizens can take toward their society if they disagree with it. The chapter concludes with a meditation on the implications of this reading of the social contract for my own ambivalence about becoming a US citizen.

1.3 What Is a Social Contract?

Cavell's reading of the social contract is a brief digression from an extended discussion of the role of criteria in Wittgenstein's *Philosophical Investigations*. Early interpreters of Wittgenstein read the concept of criteria in his work as providing the basis for certainty about knowledge claims and refuting skepticism. Cavell, however, was struck that in his reading of Wittgenstein, the concept of criteria "is an everyday one" and that Wittgenstein's concept of criteria, "while not exactly the same notion, is dependent upon the everyday one" (CR, 6). Cavell surveys the "rhetorical structure" of the word "criterion" in order to work out what criteria are in their everyday use. He claims that "criteria are specifications a given person or group sets up on the basis of which (by means of, in terms of which) to judge (assess, settle) whether

something has a particular status or value” (CR, 9). He notes three key differences between ordinary examples of criteria and Wittgenstein’s use of the term.

First, in ordinary uses – such as legal judgments, or decisions about admissions to university – there is a distinct stage in a decision about the applicability of criteria in which the one making the judgment may appeal to the application of standards (no laws or precedents in the case of a judge, no list of admission standards (applicant’s grades, personal attributes, or qualifications) in the case of a university). Yet in Wittgenstein’s use of criteria, there is no stage at which one can appeal to the application of standards: One either has the criteria and knows whether they apply in a given case, or there are nonstandard cases in which it is not clear if the criteria apply.

Second, in ordinary uses of criteria, the object of the judgment is something that in some obvious way needs to be assessed or evaluated. We establish criteria in order to have a rational and consistent way to make such judgments. For Wittgenstein, ordinary (rather than exceptional) objects are subject to criteria: All knowledge is governed by criteria because “every surmise and each tested conviction depends upon the same structure or background of necessities and agreements that judgments of value explicitly do” (CR, 14).

Third, in ordinary uses of criteria, the source of authority will vary depending on the institutional context in which the judgment is being made. Conversely, for Wittgenstein the source of authority is always *we*. Cavell observes, “The criteria Wittgenstein appeals to ... are always ‘ours,’ the ‘group’ which forms ‘his authority’ is always, apparently the human being generally. When I voice [criteria], I do so, or take myself to do so, as a member of that group, a representative human” (CR, 18).

This third difference between ordinary criteria and Wittgensteinian criteria – the question of the source of authority – prompts Cavell’s discussion of the social contract. In ordinary uses of criteria, the source of authority – that is, the individual or institution that developed the criteria – is clear. Yet two features of the criteria are unclear in Wittgenstein’s explorations of human knowledge. First, Wittgensteinian criteria do not appeal to written rules or existing institutions. Second, Cavell argues that when Wittgenstein appeals to a criterion, he is acting as a representative speaker – that is, an individual who, when challenged about a knowledge claim, presents an example of what we mean when we say something. This speaker is making a claim in the first-person plural, “when we say X we mean Y,” by providing an example that they hope others will accept. If the others who the speakers claim to represent accept this example, then the community is in attunement. If the samples fail to

elicit agreement, then we have discovered that we are not a “we,” a community, at least on this matter.

This highlights why post-truth politics is so politically fraught. When opposing sides of a political community are operating with different sets of facts, their disagreements are not merely about policy preferences but about the criteria they use to decide what is true. If they do not agree on these criteria, they lose their community. The best evidence of this is how post-truth politics quickly turns to forms of political exit and rebellion. During the Trump era, two common refrains on the political left were to imagine blue states joining Canada, leaving the red states to live in a conservative country, and liberal Americans’ threats to leave the United States (often imagining immigrating to Canada). On the right, exit fantasies tend to play out in militia movements and online conspiracy groups that call for overthrowing the “deep state” or reviving secession among former Confederate states. Grounding politics in epistemology generates the need to leave if the political order does not support an individual’s personal truth and criteria.

Cavell’s concept of a representative speaker, however, immediately raises two other questions. First, where does this individual draw these criteria from? Second, how can my knowledge be bound to a set of criteria that I am responsible for voicing when I have no recollection of developing them? This second question parallels the epistemological question about the origin of the social contract. Cavell’s point is that asking this question is what generates skepticism in both epistemology and politics.

Cavell’s answer to the first question is that we appeal to our criteria when we are not certain if an object is an appropriate example or application of a concept. Our criteria only come into question when another person challenges our application of a concept. Initially one will try to respond to such a challenge with reasons and justifications. Wittgenstein concedes that it is possible for such reasons to run out. Consider the very first remark in *Philosophical Investigations*. When the interlocutor challenges Wittgenstein about how the shopkeeper in the example knows how to look up the concepts of “red” and “five” (i.e., where does he get the knowledge to apply the concepts of number and color to the request for five red apples), Wittgenstein replies, “Well I assume he *acts* as I have described. Explanations come to an end somewhere” (PI, §1). Similarly, later in the *Investigations*, when the interlocutor challenges Wittgenstein about how someone is supposed to obey a rule (e.g., involving continuing a sequence of numbers), Wittgenstein replies, “If I have exhausted the justifications I have reached bedrock, and my spade is turned. Then I am inclined to say: ‘This is

simply what I do” (PI, §217). Some interpreters of Wittgenstein interpret the “I have reached bedrock” statement as him saying that philosophy can do no further work, that we have reached the limit of our possible explanations in this case. Cavell, however, sees this as a moment at which perhaps reasons or justifications can no longer satisfy an interlocutor, but a different mode of response (e.g., “when we say X in this context we mean Y”) is appropriate.¹²

A crucial difference between reasons and justifications, and the case of Wittgenstein or another philosopher of ordinary language responding by “saying what we say,” is that reasons and justifications are general responses that rest upon criteria. However, the types of responses Wittgenstein gives when he says, “This is simply what I do” or appeals to the shopkeeper’s actions rather than explanations produce what Cavell calls a sample. Samples offer a different approach than reasons or justifications. Reasons, justifications, and explanations are general, but they also trace the logic of how I have reached my conclusion. Conversely, a sample “is an invitation for you to see whether you have such a sample, or can accept mine as a sound one” (CR, 19). An individual could reject the invitation, or accept it and thus be persuaded by it. They could also offer a competing sample and then we could consider how and why they might be reconciled, or seek out further samples to resolve the dispute. Where reasons give out and the criteria we use to make judgments about the world are called into question, the appeal to samples reveals a crucial feature about human knowledge. “The only source of confirmation here is ourselves. And each of us is fully authoritative in this struggle” (CR, 19). Our samples can never be refuted, only not accepted (just as I could not refute an invitation to a party but only decline the invitation). As such, both Cavell and Wittgenstein concede that appeals to criteria can reach an impasse, at which neither party to a dispute about criteria will accept the other’s sample as authoritative.

Cavell describes such impasses as “intellectual tragedy” (CR, 19). But what sort of tragedy are they?¹³ If the claim cannot be refuted, then the

¹² Cavell’s interpretation of this passage is a thread that runs through his earliest writing on Wittgenstein (MWM, 52) to his late debate with Kripke (CHU, 72–82). More conservative interpreters read PI §217 as Wittgenstein appealing to conventions as the ultimate ground in his philosophy. Cavell, however, takes this passage to mean that when justifications run out, the question becomes whether or not we are in attunement – whether or not our “forms of life” are in agreement. I discuss the political implications of this further in Chapter 3. For a refutation of the conservative reading of this passage, see Luke Philip Plotica, “‘This Is Simply What I Do’: Wittgenstein and Oakeshott on the Practices of Individual Agency,” *The Review of Politics* 75, no. 1 (2013): 45–68, www.jstor.org/stable/23355714.

¹³ I discuss Cavell’s understanding of tragedy and its political import in Chapter 4.

sample cannot be false. If I reject your sample, I am not disproving you; instead, I am challenging your capacity to be a representative speaker for both of us. The intellectual tragedy to which Cavell alludes is that in such instances we discover that there is no “we”; we cannot speak for one another (at least on this topic) because we do not share the same criteria. Cavell observes that the consequences of such impasses are that “my authority has been restricted” (CR, 19). Such standoffs restrict our capacity to speak for others in two ways. First, we can no longer speak for others on the way in which they rejected our sample as an example of what we mean by a given concept. Second, and more significantly, we can no longer speak for those who rejected our sample because we have learned that, at least in this zone of knowledge, there is no “us” (CR, 20).

Cavell explicitly links the sharing of criteria to sharing membership in a community by observing that:

The philosophical appeal to what we say, and the search for our criteria on the basis of which we say it, are claims to community. And the claim to community is always a search for the basis on which it can or has been established. I have nothing more to go on than my conviction, my sense that I make sense. It may prove to be the case that I am wrong, that my conviction isolates me, from all others, from myself. That will not be the same as a discovery that I am dogmatic or egomaniacal. The wish and search for community are the wish and search for reason. (CR, 20)

Cavell argues that criteria operate as the final source of authority when we are challenged about a knowledge claim. These criteria are not true or false; they rest on a community’s shared practices. He is thus offering a social picture of reasoning in which our shared practices (linguistic, social, ethical, and political) operate as the authority against which we check different claims.¹⁴ When we are prompted to search for our criteria (i.e., when we appeal to “what we say when”), we are looking for the background assumptions that inform a community’s practices. Throughout *The Claim of Reason*, Cavell plays with the double meaning of the word “claim” as both a proposition that supports a conclusion in a philosophical argument and a personal assertion of ownership or right. In this way, Cavell draws our attention to how – through our shared criteria – the philosophical act of claiming in a formal argument is also a personal assertion of ownership and right. When challenged about “how do I know x,” I will search and provide personal samples of “what we say when” as the basis for our criteria. I need to search myself for samples

¹⁴ For a detailed development of a social picture of reasoning that draws on Cavell’s insights in this passage, see Anthony Simon Laden, *Reasoning: A Social Picture*, 1st ed. (Oxford: Oxford University Press, 2012).

that we share. And so, in searching for criteria, I am making a claim not just about knowledge, but also about us – about what we say and do. Hence, epistemology and political theory are linked in Cavell's work, since explorations of our criteria are also explorations of our society. The linking, however, occurs through self-exploration and self-discovery. The evidence one provides of a given criterion is a sample drawn from personal experience. And one has "nothing more to go on than my conviction, my sense that I make sense" (CR, 20). The confirmation, however, comes only when I offer my sample to others and discover if we share criteria (and, by extension, a sense of community) or whether we are somehow estranged from each other.

1.4 The Social Contract as an Epistemological Mystery

Cavell's argument that the search for criteria and the search for community are the same thing raises two important questions. First, on what basis can one speak representatively? Where does my authority to speak for the group originate? Second, if I share my criteria with my fellow language speakers, how can I not know what these criteria are? How can I be party to an agreement with my fellow language speakers that established these criteria when I do not remember or know of any such agreement taking place (CR, 18)? Cavell offers three answers to these questions. First, nobody could have established these criteria alone, since they are based on our shared understandings of meanings. Second, whoever is party to the criteria knows what the criteria are, or at least has the capacity to (re)discover them. Third, one cannot know a priori who is implicated by me, or who shares my criteria. It is only by voicing my criteria to others that I learn whether we share these criteria – and, by extension, a community.

Cavell argues that "the mutual meaningfulness of words must rest upon some kind of connection or compact among its users" (CR, 22). Such a compact operates in the same way as the social contract does in political philosophy. Exploring the social contract will help us understand the mutual meaningfulness of words. Cavell begins his reading by considering David Hume's dismissal of the social contract as having no historical basis. Hume argues that the origin of society is convention, not agreement.¹⁵ As a leading figure in the history of skeptical philosophy,

¹⁵ "In vain, are we asked in what records this charter of our liberties is registered. It was not written parchment, nor yet on leaves or barks of trees." David Hume, *Essays, Moral, Political, and Literary*, ed. Eugene F. Miller, rev. ed. (Indianapolis: Liberty Classics, 1987), 468.

Hume turns the social contract tradition into an epistemological problem. Since we have no evidence of a social contract, then society must be based on something other than an original agreement. Hume's answer is that the government's authority must instead rest on convention: We obey the government because this is what we have always done.

On the other side of the debate, social contract theorists such as Hobbes, Locke, and Rousseau did not claim that the social contract ever actually happened. Instead, they propose it as "an explanatory myth" (CR, 22). What do these social contract theorists hope to explain by appealing to the myth of the social contract? The standard response is that the social contract answers the question: Why ought I obey my government? The answer the social contract is supposed to provide is thus: because my continued submission to the government is more advantageous to me than the disadvantages to me that would be caused by dissolving the government. Yet Cavell finds this answer lacking since it assumes that my reason for consenting to the social contract is that I find it more advantageous, on balance. The traditional reading of the social contract assumes that consent is primarily about obedience to the government. Instead, Cavell suggests, "What I consent to, in consenting to the contract, is not mere obedience, but membership in a *polis*" (CR, 23). Asking "why I ought to obey the state" is always bound to disappoint since all societies are imperfect, and obedience will come at the cost of occasionally breaking other commitments – to friends, God, family, lovers, or oneself. While my society may be better than the state of nature, phrasing the social contract in terms of obedience is intellectual blackmail. When the question shifts from "Why should I obey?" to "What kind of a society am I claiming as mine?" then the social contract is really asking: "[G]iven the specific inequalities and lacks of freedom and absence of fraternity in society to which I have consented, do these outweigh the disadvantages of withdrawing my consent" (Cavell, 24)? The effect of this question is twofold: It simultaneously binds me to my society (establishes my membership in it, and hence my responsibility for it) and puts "society at a distance from me, so that it appears as an artifact" (Cavell, 23). Cavell's reading of the social contract enables us to critique both our society and our responsibility for not having done enough to have righted its failings.

Central to Cavell's interpretation is the puzzle of what is meant by consent in the social contract tradition. In the *Second Treatise on Government*, Locke distinguishes between express and tacit consent. According to Hume, Locke uses the idea of tacit consent to resolve the puzzle of how an individual consented to their government if they have

no recollection of doing so.¹⁶ Cavell, however, points out that Locke's notion of tacit consent only applies to foreigners who live in the commonwealth (CR, 24): Although foreigners are not *members* of the commonwealth, by deciding to settle or visit they have given their tacit consent to the government.¹⁷ Locke maintains that an individual must give his *express* consent to become a member of the political society.

It is worth considering Locke's argument about express consent and the social contract in greater detail. While Hume misreads this passage by confusing tacit consent with membership in a polis, Cavell does not spend much time situating the relevant passage within Locke's broader argument and historical context. Paying attention to both the broader argument and the context in which Locke was writing will help us interpret Locke's intention when invoking this idea of consent. He makes the distinction between express and tacit consent in a passage responding to an objection that Locke's social contract theory is impossible because individuals always find themselves born under (and hence bound to) an existing government.¹⁸ The distinction marks two levels of commitment to a society.

Tacit consent occurs whenever any person "hath any possessions, or any enjoyment, of any part of the dominion of any government," and means that the individual has submitted to the laws of the government.¹⁹ Locke says that one gives tacit consent when one possesses land, or lodges for a week, or is just using a country's highways. This obligation falls on anyone who enters a given territory regardless of the duration. Political obligation, in the Lockean sense, is not a question of the social contract, as it makes no sense to assume that tourists have the same legal status as citizens. Yet both tourists and citizens are subject to the law during their stay in a given territory. For Locke, only by giving express consent can a person become a member of that society and join the social contract. He noted that the source of this confusion between express and tacit consent emerges because although at the founding of a society each person

¹⁶ Hume, 475.

¹⁷ Tully observes that "Explicit oaths of allegiance to the present form of church and state were ... the central issue of obedience and resistance ... from 1660 to 1690." James Tully, *An Approach to Political Philosophy: Locke in Contexts*, ed. Quentin Skinner, 1st ed. (Cambridge: Cambridge University Press, 1993), 34. In his later work, Tully argues that the principle of consent is one of the three conventions of democratic constitutionalism (the other two are mutual recognition and continuity). See James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995), 116–24.

¹⁸ John Locke, *Two Treatises of Government*, ed. Peter Laslett, 3rd ed. (Cambridge: Cambridge University Press, 1988), para. 2.113.

¹⁹ Locke, para. 2.119.

consents in both ways simultaneously, once people are born into an existing society, they must each consent explicitly to the government. Locke writes:

And thus *the consent of freemen, born under government*, which only makes them members of it, being given separately in their turns, as each comes to be of age, and not in a multitude together; people take no notice of it, and thinking it not done at all, or not necessary, conclude they are naturally subjects as they are men.²⁰

Locke introduces the idea of *express consent* to respond to the objection that because all people are now born into a society with a government, they cannot have consented to that government. Locke introduces the distinction between tacit and express consent to respond precisely to the epistemological problem of the social contract that Hume raises – “namely how can I be party to an agreement that I have no recollection of making.” For Locke, as for Cavell, the social contract is not about obeying the law. Anyone who is in a territory tacitly consents to obey the government’s laws. The social contract establishes my membership in a society through my express consent. Locke argues that when “free men” come of age, they give express consent through “oaths of fealty, or allegiance, or other public owning of, or submission to the government of their countries.”²¹

In Locke’s day, individuals would swear an oath of allegiance to their city and the commonwealth in exchange for being recognized as free men.²² The term “freedom” was contrasted with “serfdom”: A free man owed no formal services to a vassal, whereas a serf was required to work for a lord in exchange for residing on his property. Locke argued that taking a freemen’s oath equated to giving express consent to the commonwealth.²³ While the practice of the freemen oath’s is unique to seventeenth-century England, Locke’s notion of express consent raises a more general point about citizenship. In most contemporary states, citizenship is obtained through birth. Yet even in modern societies, citizens at the age of majority must take active steps – such as registering to vote, enrolling for compulsory national service, or applying for a passport – to exercise their citizenship. The epistemological puzzle raised by Hume and considered by Cavell emerges because the practice of giving our express consent is so quotidian that we hardly reflect on it at all. Hume’s social contract skepticism emerges because we ignore these

²⁰ Locke, para. 2.117. ²¹ Locke, para. 2.62.

²² Richard Ashcraft, *Locke’s Two Treatises of Government* (Routledge, 2013), 170; Tully, *An Approach to Political Philosophy*, 34.

²³ The oath asked free men to obey the government and maintain the peace in exchange for “his Admission to the said Freedom.”

commonplace practices and demand instead that the social contract theorist identify a founding moment such as the Tennis Court Oath in France or the US Declaration of Independence when we gave our express consent as a multitude. While some polities can point to these founding events as the moment the social contract was constituted, none of us were there.

There are moments of epistemological crisis in Locke. The most significant moment occurs at the very end of the text, after he has argued that violating the power the people have entrusted to the prince or legislature would justify dissolving the government. Locke asks, “*Who shall be judge?*”²⁴ This moment is similar to Carl Schmitt’s definition of the sovereign as “he who decides on the exceptional case.”²⁵ Locke answers this question differently, however. Whereas Schmitt appeals to the sovereign as the one who determines that a state of exception applies in this case, Locke’s response to the question of who should be the judge in the exceptional case of the government violating its trust has three answers. First, Locke responds that “*The people shall be judge*”²⁶ for they have entrusted the power to the government, and so they are best positioned to see whether their trust has been violated. Locke then argues that “*God in heaven is judge*”²⁷ in the event that the government or individuals cannot resolve their dispute. Finally, he argues that “*every man is judge for himself*”²⁸ on the matter of whether the government has violated his natural rights.

If Cavell turns to the social contract to resolve some epistemological puzzles concerning the status of criteria in the philosophy of language, then it should not be surprising that Locke turns to epistemology to resolve some political puzzles concerning the status of judgment in the event of revolution. Both thinkers encounter skepticism at the moment when a community (linguistic in Cavell’s case, and political in Locke’s) calls itself into question. Locke’s three answers about who is judge draw our attention to how a revolution questions the very we-ness of the community. If through the social contract I consented to the process that put the government in place, then I am in some way responsible for that government. If the government violates the trust its citizens put in it, then it is the responsibility of the people to revoke its power. In the first instance, it is the people collectively who may ask the government to

²⁴ Locke, *Two Treatises of Government*, para. 2.168.

²⁵ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Chicago: University of Chicago Press, 2005), 5.

²⁶ Locke, *Two Treatises of Government*, para. 2.168. ²⁷ Locke, para. 2.168.

²⁸ Locke, para. 2.168.

resign and replace it with a new one. Yet if the people do not all share the same judgment, or if the government rejects the people's judgment, Locke asserts that each individual must consult his conscience.

There are echoes in this passage of Martin Luther's declaration at the Diet of Worms ("Here I stand I can do no other") and further echoes in Cavell's claim, "I have nothing more to go on than my conviction, my sense that I make sense" (CR, 20). In the second instance, the people are placed in conflict with the government; since the people are the ultimate judge, the epistemological problem is not difficult to resolve: The people have the right to remove the government that violates the power they have entrusted to it.

Yet Locke's theory opens up the possibility of a revolution of one.²⁹ The risk here is that I may stand alone in my war with the government. Ted Kaczynski stood alone. Timothy McVeigh and Terry Nichols did not quite stand alone, but their sense that the US government had violated the natural rights of its citizens at Waco, Texas, and Ruby Ridge, Idaho, led them to murder 168 people in a federal government building in Oklahoma City. John Brown had eighteen men in his raiding party on Harper's Ferry, yet that event triggered the Civil War that ended slavery. Martin Luther's conviction led to the reformation. In all four instances, a crisis caused individuals to search for their community, and they found it wanting in a fundamental way. Locke calls such moments "appeals to heaven" and notes that "in that state the injured party must judge for himself, when he will think fit to make use of that appeal, and put himself upon it."³⁰ Revolutionary moments such as those outlined above put oneself beyond morality. McVeigh, Nichols, and Kaczynski may all be monsters. But what differentiates them from Brown and Luther is that history vindicated the struggles of the latter two but

²⁹ Locke argues that a crucial question in resistance is "*Who shall be Judge* whether the Prince or Legislature act contrary to their Trust?" His initial answer is that "*The People shall be judge,*" but he also considers cases "where there is no Judicature on Earth, to decide Controversies amongst Men," and argues that in these instances "*every Man is Judge* for himself" and must decide "whether he should appeal to the Supreme Judge, as *Jephtha* did." Jephtha vowed to lead the Israelites in overthrowing the rule of the Ammonites and vowed to God to sacrifice the first living thing he saw upon his return if he is victorious in battle. This turns out to be his daughter. The implication of this passage is that while the people as a collective resist unjust rule, it ultimately is a matter of individual conscience whether one picks up arms in order to overthrow the government. The judgment to rebel is an individual one, not the result of a vote by the people. See Locke, paras. 2.240–41. For the argument that the ultimate judgment of whether the rulers had abused their authority rested in the individual judgment of the governed rather than an institutionalized body, see Tully, *An Approach to Political Philosophy*, 319.

³⁰ Locke, *Two Treatises of Government*, para. 2.242.

condemned those of the former three. A later community accepted their justifications for rebellion after the fact. In Locke's language, God rejected the appeals of Kaczynski's anarcho-primitivism and Nichols's and McVeigh's antigovernment militia movement but accepted Brown's radical abolitionism (after five years of war and 750,000 to 1 million casualties) and Luther's reformation (after thirty years of war and over 8 million dead). Appealing to heaven means, in practice, appealing to one's fellow citizens. By sharing their convictions and their criteria of justice, they found their communities. Kaczynski and McVeigh found that nobody would follow them.

1.5 The Social Contract as Philosophical Political Education

If the social contract is not about demonstrating why I ought to obey the government but only demonstrates my membership in a community, then why bother reading the social contract theorists? The social contract simultaneously binds us to society, by showing us how deeply our sense of self derives from our membership in the community and reifies society by turning it into an object for us to critically examine. For Cavell, this act of distancing myself from myself through reflection on the social contract is a form of *philosophical political education*. Cavell uses each of these three terms – “philosophical,” “political,” and “education” – in a particular way.

He understands *philosophy* in the ancient sense as a therapeutic practice and form of life. The point of philosophy is a critical self-examination through an attack upon my assumptions (the exemplary texts here are the Platonic dialogues). By *political*, Cavell means that “the terms of this self-examination are the terms which reveal me as a member of this polis” (CR, 25). Cavell first defines the political in chapter 1 of *The Claim of Reason*, when considering the example of university admissions criteria and their connection to questions of social justice. In some instances, general criteria or standards may require further specification; if such specification occurs in an institutional context, then the dispute about this specification is likely to become political. Thus, as Cavell explains, “So ‘political’ in some mouths refers to adjustments or eradications which make exceptions in individual cases; in others, it refers to adjustments or eradication of the system which is empowered to define the individual as central or exceptions” (CR, 12).

There are exemplary texts in the political theory tradition for each of these understandings of the political. The first position is expressed by Schmitt, who frequently uses the term “criteria” in *The Concept of the*

Political.³¹ The second position, the modification of the system, is the view expressed in Rawls's *A Theory of Justice*, where we meet in the original position to reason about principles of justice.³² The third position, the eradication of the system, is expressed in Locke's second treatise and in Marx and Engels' *Communist Manifesto*: A revolution is necessary because the system that established the political criteria of our society is fundamentally defective.³³ Politics, in the Cavellian sense, is the process of challenging both: (1) the criteria that our institutions use to make judgments about our common affairs and (2) the institutions we belong to, which generate our shared criteria.

Finally, the social contract is an *education*. Its lesson is "the finding and forming of my knowledge of myself requires the finding and forming of my knowledge of that membership" (CR, 25). Education, in this sense, involves not the transmission of knowledge from teacher to student but a process of self-discovery. Nobody can give me self-knowledge; at best, a teacher can provoke within me the desire to discover for myself who I am. Cavell's point is that the social contract is one example of such a provocation – I do not know who I am because I do not know the polity of which I am a member. The social contract prompts me to question the society that I am a member of, and in the process to discover who I am.

1.6 Four Ways of Responding to My Community's Failure

Cavell finds Rousseau the "deepest among the classical writers on the topic of the social contract" because he does not treat the social contract

³¹ Schmitt argues that each realm of human affairs has its own criteria by which it judges objects within its purview. For example, the world of aesthetics judges objects as ugly or beautiful, while the world of economics judges objects as either profitable or unprofitable. Schmitt writes, "The specific distinction to which political actions and motives can be reduced is that between friend and enemy. This provides a definition in the sense of a *criterion* and not as an exhaustive definition or one indicative of substantial content." See Carl Schmitt, *The Concept of the Political: Expanded Edition*, trans. George Schwab, exp. ed. (Chicago: University of Chicago Press, 2007), 26. Emphasis added. For Schmitt, disputes about criteria are resolved by the sovereign. Cavell's approach is inherently more democratic because the ultimate source of authority in any dispute about criteria is the community of competent speakers of the language (CR, 165).

³² In Rawls's social contract theory, the original position takes the place of the state of nature. The parties in the original position agree on principles of justice and the basic structure of society without knowing what social position they will occupy once they leave the original position and enter society. Rawls describes a "process of mutual adjustment of principles and considered judgments" as one of reflective equilibrium. One of its aims is to reform the system so it more closely matches principles of justice. I discuss Rawls's approach of reflexive equilibrium and Cavell's critique of it in Chapter 6. On the concept of reflective equilibrium, see TOJ, 48–51.

³³ Karl Marx and Friedrich Engels, *The Communist Manifesto*, ed. Samuel Moore (London: Penguin Books, 2015).

as a form of political knowledge (CR, 25). Whereas Hobbes and Locke claim to know what the state of nature was like, Rousseau argues that the origin stories provided by political philosophers through the social contract are in fact “projections of their own states of society, or their fantasies of it” (CR, 25). According to Rousseau’s account, Hobbes’s state of nature is merely his projection of his fantasy of human beings who are always competitive and diffident; for him, the end of society is commercial activity. Locke projects an image of humans as capable of resolving their disputes by appealing to their faculty of reason; his interpretation of the end of society is the preservation of human life, liberty, and private property.

By treating the state of nature as a projection of the philosopher’s delusions and fantasies about their own society, Cavell shifts the terrain of analyzing the state of nature from prescientific natural history to psychoanalysis. In Freudian psychoanalysis, the fantasy is a defense mechanism that the subject uses to compensate for the fact that reality rarely satisfies the subject’s wishes. In this case, the social contract projects either the political theorist’s own society – as they find it – or their fantasies about it, onto the social contract myth. In one sense, this is not too deep an insight. Hobbes imagined the state of nature as a state of war because he wrote in the wake of the English Civil War and thus saw overthrowing the monarch as bringing about a state of war. But projection in Cavell’s work is significant because he uses the concept in two senses. In the first sense, he evokes the Freudian idea of a defense mechanism – in which the subject projects his deepest insecurities onto others. In this sense, the social contract theorist who projects the darkest parts of his own soul – those desires and fantasies that he cannot recognize or accept as his own because confronting that knowledge would be too painful – onto his imagined state of nature. What I find irredeemable in myself I try to redeem by ascribing those traits to all human beings.

The second sense of projection (CR, 180) concerns Wittgenstein’s vision of language in which we learn to use a word in a given context, and then are able to project the word into a different context with a different, but related, meaning. Cavell provides the following example to illustrate this phenomenon of projection: “We learn the use of ‘feed the kitty’, ‘feed the lion’, ‘feed the swans’ and one day one of us says ‘feed the meter’, or ‘feed wire’ and we understand, we are not troubled” (CR, 181). Cavell argues that this surprising feature of language – the fact that we can use a word in an entirely new context, with a modified meaning, and that our fellow language speaker will understand what we mean by (for example) feeding the meter – complicates philosophy’s long quest

for the essential meanings of words. Recall that political philosophy (at least in the West) begins with Socrates asking his interlocutors what is justice, and then finding the answers they provide him wanting because they do not capture the essence of justice. Wittgenstein and Cavell reject this search for a universal essence that gives a word its meaning. Instead, they argue that words get their meanings from our forms of life (the practices we share with our fellow human beings), which “give those words the point and shape they have in our lives” (CR, 184).

Cavell believes there are “two fundamental facts about human forms of life” that are in conflict with each other but do not contradict each other (CR, 185). First, because forms of life are constituted through human activity, they (and the ways in which they can be modified and projected) are necessarily indefinite and open ended. We cannot know before an attempt has been made to modify a form of life or use it in a new context whether such a modification will work. Cavell's second fundamental fact is that the variability in forms of life is not arbitrary. He maintains that concepts must be “tolerant,” that is, open to new uses and meanings, yet not every object, activity, or event will allow a projection (CR, 183). Nor can we predict how a word might be projected into a new context in the future.

One reason that Cavell is drawn to Rousseau's reading of the social contract is that it has perfectionist themes in it. The social contract, according to Rousseau, does not yet exist – or if it does exist, both my society and I are fundamentally compromised. We are not our best possible versions of ourselves, because we put narrow short-term interests (the private will) ahead of what is best for all of us together, and in turn best for ourselves (general will). The task of the social contract is to overcome this corrupted and compromised state, and to “become who we are” or to “achieve our country.”³⁴ Whereas for Hobbes and Locke, the social contract is retrospective, seeking to correct a present political problem by appealing to the terms of the agreement at the founding, Rousseau's social contract is prospective – imagining a

³⁴ The first phrase is the title of Andrew Norris's book on Cavell, modified slightly from Pindar's dictum to “become who you are.” The second is a modified version of Rorty's book that advocated a politics grounded in the progressive pragmatism of John Dewey. The latter experienced a resurgence of interest during the Trump administration due to its prophecy of an authoritarian strongman who wins power in the United States by gaining the support of the working class, who are resentful of the identity politics Rorty equates with the cultural left. In both cases, the vision of politics seeks to predict the future in order to create a sense of community in the present. See Richard Rorty, *Achieving Our Country: Leftist Thought in Twentieth-Century America*, new ed. (Cambridge, MA: Harvard University Press, 1999); Norris, *Becoming Who We Are*.

possible future in which we (as individuals and as a society) achieve our unrealized potential.

In distinguishing between Rousseau's social contract and those of Locke and Hobbes, Cavell points out that they have fundamentally different approaches to what he terms the "epistemological problem of society." For Hobbes and Locke, social contracts appeal to past agreements. Hobbes argues that even if I did not agree to the social contract, if it was established by conquest (as is the case in most historical states) then it still holds.³⁵ For Locke, an individual is committed to the contract via the oath through which he gives express consent to society at the age of majority. Rousseau shifts the terms of the inquiry from the temporal puzzle of when did this agreement occur to the epistemological questions of how do "I know with whom I am in community" and "to whom and to what ... am [I] in fact obedient" (CR, 25). For Rousseau, the epistemological problem is resolved by searching myself. My innermost³⁶ thoughts reveal deep truths about my society and my relationship with it; thus, by sharing my innermost thoughts about society I speak not just for myself but for society as a whole. Private thinking alone cannot resolve this epistemological puzzle. It is only by speaking these innermost thoughts in the first-person plural (speaking representatively, as Cavell calls it) and seeing if others accept my innermost thoughts as their own that we discover the social contract.

Cavell reads Rousseau's version of the social contract as one such instance of representative speaking. Rousseau believes society is deeply compromised ("man is born free, yet everywhere he is in chains") because the general will is not in effect. Instead, each member of society is exercising their will to private benefit. As Cavell puts it, "We obey the logic of conspiracy, though we believe this to be true only of others" (CR, 26). If each person is putting their private will and interests ahead of the general will, then all of us are engaging in small conspiracies against society. This is problematic because we delude ourselves into thinking that this conspiracy against society does not exist by imagining the ideal

³⁵ Thomas Hobbes, *Hobbes: Leviathan*, ed. Richard Tuck, rev. stud. ed. (Cambridge: Cambridge University Press, 1996), ch. 20.

³⁶ For Rousseau, the private will refers to those things that I desire because they are in my perceived self-interest, as opposed to the general will, which refers to those things I desire because I believe them to be in the collective interest. Both the private will and the general will are discovered through self-inquiry. Cavell notes the similarity between Rousseau's search for the general will, ordinary language philosophy's search for meaning, and Emerson's understanding of genius. In each case, the philosopher searches their innermost thoughts, the one's they often fear to voice publicly, in order to discover the most universal of truths. In order to avoid confusion with Rousseau's term "private will," I have phrased these as "innermost" thoughts in this paragraph.

society. As Cavell observes, “[W]e hallucinate the meaning of others to us (e.g., as equals) or we have the illusion of meaning something to one another (e.g., as free fellow citizens)” (CR, 26). In modern liberal democracies, each person is supposed to be equal under the law, to have equality of opportunity to pursue their aspirations, and to be free to exercise basic rights such as free speech and freedom of religion without threat of intimidation. In practice, we know that the law discriminates based on race, class, gender, and nationality, and that opportunities in life very much depend upon one’s social standing at birth and subsequent moral luck. There are numerous social, economic, and legal pressures that keep us from freely expressing unpopular thoughts. The distance between our ideal image of citizenship and our frustrated attempts to exercise our citizenship in practice is what Cavell calls compromise.

Yet Rousseau’s model of the social contract also suggests a way out of this compromised state. In his account of the general will, each citizen must search their conscience, and then express what they think the general will should be through voting. If each citizen does this, the outcome of the vote should reveal the general will – what we as a community, individually and collectively, want to achieve. Justice will occur provided the vote is a pure expression of each individual’s private will, and not a corrupted aggregation of private interests. Cavell declares, “The first epistemological problem is the first problem of justice: when we know our position we will know what ought to happen” (CR, 26). We resolve the problem of “how do we know what the social contract is” by searching our individual consciences and then sharing and comparing our private consciences with the collective conscience (the general will). What the general will agrees upon is justice. I may discover through this process that what I *thought* was the general will (what in consulting my private conscience I believe to be just) is wrong. But in this instance, the general will educates me on the error of my ways. For Rousseau, once the general will has been articulated, then the debate about what to do (the epistemological problem of “how do we know what is just in this situation”) ends.

At this juncture, we should pause to consider two issues. The first is what does Cavell consider significant in this reading of Rousseau? The second is to consider the rather obvious problem of what one ought to do after discovering that one’s private will is in disagreement with the general will. According to Cavell, Rousseau discovered “a new mode of knowledge” and a “new mode of ignorance” (CR, 26). The new mode of knowledge is that one can access one’s society by searching deeply into oneself. The search for truth begins through self-exploration and the disclosure of what one uncovers through self-discovery to others. The

new mode of ignorance is the condition in which one does *not* engage in this process of self-discovery. One is then in a state of either unconsciousness or false consciousness.

Cavell links Rousseau's new mode of ignorance to the two modes of ignorance championed later by Marx and Freud. According to Marx, false consciousness explains that my delusions about how society works conceal how I am exploited by my capitalist masters. For Freud, my unconscious hides from me my deepest desires and drives. In all three cases – Rousseau, Marx, and Freud – liberation (be it for the individual or society) is achieved by searching oneself and bringing repressed thoughts to the surface. Cavell echoes this process in his own writing when he says, "I have nothing more to go on than my conviction, my sense that I make sense" (CR, 20). The ultimate ground of justice in the case of political philosophy – and the ultimate ground of truth, in the case of epistemology – is this process of searching oneself for what one thinks is true, sharing it with one's fellow citizens, and comparing one's own intuitions with what others share with us.

In both Cavell's discussion about the search for criteria and in the case of the general will, one immediately encounters the problem of what happens when I find that my private thoughts are in disagreement with the thoughts of others. Cavell maintains that the social contract is about political responsiveness rather than political epistemology. When I share my intuitions about criteria and justice with my fellow citizens, I am waiting to see how they respond to me.

In *The Claim of Reason*, in passage about the social contract, Cavell uses words such as "risk," "rebuff," "impotence," "exile," "withdrawal," "voiceless," and "mute" to describe what happens when one's judgments are not shared by the community (CR, 26–28). There is no guarantee that whenever one tries to speak representatively that the others one is speaking for will accept and agree with what I have said. We can never know before we speak for others whether they will accept what we say; this is the risk of speaking politically. In most circumstances, we find that we are in agreement with each other – that you will accept what I say as a fair representation of what we believe. When others speak for me, in most circumstances I will find that what they say on my behalf is a fair representation of what I believe.

There are other possibilities, however. For instance, I may discover that what most people believe is not what I believe. I can try to adjust my beliefs to match those of the community, or I can express dissent either to persuade others, or simply to register the fact that the community does not speak for me – at least not in this instance. Yet by shifting the ground from knowledge to responsiveness, Cavell opens up a whole terrain of

political life between acquiescence to political order and complete rejection of that order. Approaching politics epistemologically invites skepticism because it often sets up a false binary between the true and the false. Political responsiveness enables us to disagree without repudiating our relationship to each other altogether.

The protest expression "Not in my name!" is an example of rejecting what my community *does* without rejecting the community itself. It is an expression of outrage at what is done in my name. It is a plea for others who hold similar outrage at what my community has done to acknowledge that I did not consent. If we consider this in terms of Albert O. Hirschman's theory of how members of an organization respond to the deterioration of that organization, then this is a moment of voice. I may continue my membership in an institution but express dissent in an effort to change it. Hirschman thinks institutions need such practices of voice in order to prevent their decline. Another possibility is to withdraw not by leaving the community but by opting not to speak. These are moments of acquiescence when, while I do not approve of what my community has done in my name, I feel either too afraid of the consequences of speaking out (fear of social sanction from my peers, fear of losing my job) or fatigue at the thought of another tedious argument with a troll (online or at the pub). Choosing not to fight can be a relief, but I may feel frustrated that I did not live up to the best version of myself, or that I did not have the courage to join the fight when it mattered. Or I may feel ashamed that I am a coward, lacking the courage to speak up when something intolerable is done in my name. Hirschman calls this loyalty.

The risk that my attempts at representative speaking may go unheard, or unvoiced, is an essential feature of the political. While we often imagine the heroic dimension of political voice – that is, we somehow save the day by voicing our concerns about the direction of the republic – in practice our voice is often muted and frustrated. As Cavell reminds us, the political is unique because:

[T]he impotence of your voice shows up the quickest; it is of important to others to stifle it; and it is the easiest to hope that since others are in any case included in it, that it will not be missed if it is stifled; i.e. that you will not miss it. (CR, 27)

Speaking politically can be stifled in at least three important ways: (1) one speaks but is not heard (impotence), (2) one is threatened into silence (intimidation), or (3) one forgoes politics altogether because it is too much of a hassle (acquiescence). In each instance, I compromise myself by failing to voice what my inner self knows to be true and important. Cavell calls these acts of compromise private conspiracies against my

community (CR, 26). Because I think it will be easier (less hassle, less risk) to not speak out, I do not express my truth to the general will. And choosing the easier path for me personally allows my community to carry out great injustices in my name. This situation is doubly tragic. It is tragic because I fail to acknowledge the truths within me when I decline to give public voice to them. It is also tragic if, in giving voice to them, my community fails to acknowledge them by ignoring or suppressing my voice.

The first mode of representative speaking consists of fully participating in the general will by speaking representatively. The second mode entails being silenced, through either intimidation or self-censorship. Cavell signals two other possibilities. The first is exit – what he calls the withdrawal of consent. The second is developed later in his discussion of remarriage comedies – which I would label self-overcoming.

What does exiting the social contract mean? If we follow Cavell's reading of Locke, then even an act of revolution does not mean leaving the community, only removing the government. According to Cavell's interpretation of the social contract, "speaking for others and being spoken for by others" (i.e., representative speaking) is part of consenting to the social contract. He explains that "consent entails the acknowledgment of others" (CR, 27). In consenting to speak for others and to have them speak for me, I must acknowledge these others as my fellow citizens. Withdrawing consent from the community must also involve this same process of acknowledgment, except now in reverse. For Cavell, to exit the social contract:

I have to say *both* "It is not mine any longer" (I am no longer responsible for it, it no longer speaks for me) *and* "It is no longer ours" (not what we bargained for, the original "we" is no longer bound together by consent but only by force, so it no longer exists). (CR, 27)

Exit thus involves a double revoking of consent. First, the individual must renounce responsibility for the community and revoke its right to speak for him. This is different from the declaration "not in my name," where I register dissent with what my community is doing, but still acknowledge that it is mine. Instead, I am renouncing my membership in the community. Such moments of outright renunciation are rare in politics. An individual can emigrate to a different country (as Locke suggests),³⁷ but unless they renounce their citizenship, they have not fully withdrawn consent. Conversely, the state can strip me of my citizenship or persecute me so harshly that I must flee.

³⁷ Locke, *Two Treatises of Government*, secs. 114–18.

These moments of flight from a community draw our attention to the second aspect of leaving the social contract, which involves not just renouncing the state itself, but the first-person plural – the “we.” If I leave the social contract, I not only lose my membership in a polity; I also lose a part of my sense of self.

There is another possibility, which I term perfectionist education. While Cavell only develops his idea of liberal perfectionism in his later work, his brief discussion of consent in this passage (CR, 22–28) anticipates some of his later perfectionist writings. Key to Cavell's notion of perfectionism is the idea of a provocation that draws me from my present compromised self to a new, better self. Cavell notes in the concluding passages, “Dissent is not the undoing of consent but a dispute about its contents” (CR, 27). The dispute is about whether society in its current form is true to the terms under which we consented to become a member of it in the first place. The goal of dissent (despite the oft-made claims by those who seek to stifle it) is not to leave the community but to return it closer to its ideals – to make it a “more perfect union.”³⁸ In the closing lines of his discussion of the social contract, Cavell ponders the puzzle of consent across the generations. He notes that the process of teaching a language to a child entails initiating the child into both a form of life and the community that practices that form of life. This creates an interesting tension across the generations:

If I am to have a native tongue, I have to accept what “my elders” say and do as consequential; and they have to accept, even have to applaud, what I say and do as what they say and do. (CR, 28)

For a community to sustain itself, the new generation must accept the social contract of their elders as their own. Yet for a community to renew itself, the elders must accept (and even embrace) their children's critiques of the existing social arrangement. The first condition – the younger generation's acceptance of the social contract of the elders – brings us back to the original epistemological puzzle of the social contract: How can I be party to a social contract when I do not remember entering such an agreement? By being initiated into the community's ways of life, I am initiated into the community.

³⁸ President Obama used this phrase from the preamble of the US Constitution in his March 2008 speech addressing the controversy about his pastor Jeremiah Wright and the issue of race in America. Throughout his presidency, Obama used the phrase to invoke a forward-looking political agenda. While Obama's reading of “more perfect” is more Whiggish than Cavell's understanding of perfectionism as an unattained but attainable state, they both share the sense that critique of society is a necessary precursor of structural change.

This is what Locke calls tacit consent. By learning the customs and practices of his new community, the immigrant is giving tacit consent to the community. Express consent for Cavell only seems to be given when a person speaks representatively – that is, speaks for their community as if it is their own. When the young do this in politics, it is often to express their distress that their elders have left the world in such a mess. Voicing political dissent thus entails giving express consent to the social contract.

University students frequently join various political groups and movements. Although some of these causes are inartful or poorly expressed, a double education is taking place. On the one hand, the students are teaching themselves how to speak representatively for their community, and in the process they are becoming members of that community. On the other hand, they are educating the community about its own shortcomings. Since (at least) Antigone the younger generation has used dissent to educate their elders about how the culture they are being initiated into does not live up to the ideals of the social contract they were promised. Thus dissent, when received and applauded by a community's elders, is a source of perpetual renewal of the social contract.

In his later work, Cavell links the ideas of moral perfectionism and consent to remarriage comedy. He sees perfectionism as provoking self-examination aimed at self-overcoming. The perfectionist tries to move herself from the current crossroads at which she finds herself toward her unrealized self. Cavell finds that most of these perfectionist texts involve a conversation (often between an older and younger friend) that is intended to bring about such a self-transformation in one of them. One possible form this dialogue can take is between a married couple. Cavell is fond of quoting Milton's definition of marriage (taken from his tract defending divorce) as a "meet and happy conversation." Cavell links this idea of marriage as conversation to perfectionism by imagining a happy marriage as one in which two partners carry on a dialogue in which they improve each other over time.

While Locke, in *The Second Treatise of Government*, was reticent to draw an analogy between the commonwealth and marriage,³⁹ Cavell thinks there is a strong analogy between the two. Both institutions are premised

³⁹ For Locke, political power entailed the power of life and death and all lesser powers over one's subjects. He observed that the husband in a marriage had no need for those powers, and that the purpose of marriage (unlike political order) was procreation and mutual support. While Locke's views of marriage are certainly dated, it is worth reflecting on why he was hesitant to draw an analogy between marriage and politics, whereas the similarities between the two are central to Cavell's perfectionist politics. I explore the connections in greater detail in Chapters 5 and 6. See Locke, *Two Treatises of Government*, sec. 84.

on an open-ended conversation aiming to improve both the individuals in the relationship and the relationship as a whole. Both are also founded upon consent, the withdrawal of which by one member undoes the relationship. Most importantly, dissent, be it protest in the commonwealth or argument within the marriage, is necessary to the institution's perpetual renewal. It is only by bringing forth dissatisfaction with the current state of affairs, and expressing a vision of how the relationship ought to be, that a marriage or a commonwealth can become "more perfect."

1.7 Conclusion

What are the implications of Cavell's account of the social contract for my decision to become a US citizen? His analysis illuminates my ambivalence about American citizenship and suggests that this ambivalence may be a sign that I am more closely tied to the United States than I might wish to admit to myself. The traditional approach to citizenship implies that I am bound to obey the laws of the land because I have given my express consent to the state by becoming a citizen. I am still free to express dissent, so long as it is within the normal, law-abiding avenues of democratic discourse.

There also seems to be some normative pressure – perhaps not quite an obligation – for me to love my adopted country. This attitude toward an individual's social contract with their country can be expressed in ideas such as Kant's declaration "*Argue as much as you like, about whatever you like, but obey!*"⁴⁰ Or the proud declarations of Reagan-era patriots such as Lee Greenwood, who croons "I'm proud to be an American / Where at least I know I'm free." The song talks about the singer losing everything except his children and wife, and feeling in love with the United States because of soldiers who had died in the past defending the country. Here, the image of obligation is not even based on consent but debt to fallen soldiers. It is also interesting how contra the spirit of Locke this example of late twentieth-century American patriotism is. The singer could lose his property and presumably all other freedoms and still feel bound to the United States because of this blood debt. A similar sentiment is expressed in Toby Keith's post-9/11 patriotic song "Courtesy of the Red, White, and Blue," in which the singer describes his father's military service as the basis for his obligation to the United States.

⁴⁰ Immanuel Kant, *Kant: Political Writings*, ed. Donna M. Brinton and Janet M. Goodwin (Cambridge: Cambridge University Press, 1991), 59.

I moved to the United States in August 2000, when the economy was booming, Clinton's second term in office was finishing, and the United States was the unquestioned hegemon. When I arrived at the University of Minnesota, left-wing politics after the "Battle of Seattle" (the 1999 protests against the World Trade Organization) was less about critiquing the United States and its foreign policy – as it had been in the 1960s and early 1970s during the Vietnam War – and more about resisting globalization.

Oddly, the left now finds itself defending globalization while the far right of the Republican Party rejects "globalism." It is a cliché to say that 9/11 "changed everything," but the left's critiques of the United States were rapidly scrambled. The hyper-patriotism of the United States – the "my country right or wrong" attitude – had been largely dormant in the twelve years between the end of the Cold War and the 9/11 attacks. Yet those tropes were quickly remobilized to shut down dissent in the early days of the "War on Terror." The right spent the next seven years branding those who disagreed with their policies – which included the invasions of Afghanistan and Iraq, the establishment of the detention camp at Guantanamo Bay, the suspension of habeas corpus, the revelation of a warrantless wire-tapping program, the use of drones for "targeted killings" without trial, and the use of torture and extraordinary rendition – as sympathizing with the enemy. President George W. Bush famously declared, "Either you are with us or you with the terrorists."⁴¹ Obedience to the state no longer meant obeying the law; it required full acceptance of everything done by the state in your name.

Cavell's reading of the social contract creates a space for me personally to be a patriot, but also to be ambivalent – and even ashamed – about actions taken in my name as a US citizen. His interpretation allows me to take responsibility for all these actions, but to recognize that I also have a duty not to blindly *accept* them, but to work where (and when) I can to resist them – to choose voice over voicelessness.

⁴¹ "Text: President Bush Addresses the Nation," *Washington Post*, September 20, 2001, www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/bushaddress_092001.html.